IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

Bail Appl..No. 3665 of 2007()

CC.677/2005 of J.M.F.C., HARIPAD

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PETITIONER/ACCUSED

JOY KALLUMKAL, AGED 43 YEARS,
S/O. GEEVARGHESE, KALLUMKAL HOUSE,
EDAKADATHY MURI, KOLLAMULA VILLAGE,
RANNY, PATHANAMTHITTA.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3665 OF 2007

Dated this the 20th day of June, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.420 of the IPC. Cognizance has been taken on the basis of a final report submitted by the police which, in turn, is submitted on the basis of a private complaint filed which was referred to the police under Sec.156(3) of the Cr.P.C. According to the petitioner, he had no knowledge whatsoever of the pendency of the proceedings. No summons has ever been served on him. A warrant of arrest is issued against him unjustifiably. He is, at present, employed abroad. The petitioner is excepted to be in India during the first week of July, 2007. He apprehends that he may be arrested in execution of the warrant. He further apprehends that if he surrenders before the learned Magistrate, his application for bail may not be considered on merits, in accordance with law

and expeditiously. He therefore prays that directions under Sec. 438/482 of the Cr.P.C. may be issued in his favour.

2. It is by now trite that the directions under Sec.438 of the Cr.P.C. can be issued even in favour of a person who apprehends arrest in execution of coercive process issued by the court. (See **Bharat Chaudhary and another v. State of Bihar –** AIR 2003 SC 4662). But even then, there must be compelling reasons to invoke the powers under Sec.438 of the Cr.P.C. This, I am satisfied, is not a fit case where such invocation of the powers is necessary. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

3. In the result, this Crl.M.C. is dismissed; but with the

observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge